

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOILERMAKERS NATIONAL
ANNUITY TRUST FUND, on behalf of
itself and all others similarly situated,

Plaintiff,

v.

WAMU MORTGAGE PASS THROUGH
CERTIFICATES, SERIES AR1, *et al.*,

Defendants.

DORAL BANK PUERTO RICO, on behalf
of itself and all others similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL ASSET
ACCEPTANCE CORPORATION, *et al.*

Defendants.

Case No. C09-00037MJP

**DEFENDANTS' JOINT MOTION
FOR REVISION TO BRIEFING
SCHEDULE FOR MOTION TO
DISMISS**

**NOTE ON MOTION CALENDAR:
April 13, 2010**

I. RELIEF REQUESTED

All of the Defendants respectfully request that the Court modify slightly the briefing schedule for the motions to dismiss so as to provide Defendants with ten days to prepare their reply briefs instead of the four days allotted under the current schedule without changing the noting date set by the Court and without shortening Plaintiffs' opposition briefing time. Defendants propose to create the additional time by filing their

1 motions to dismiss six calendar days earlier than required. Plaintiffs are not jointly
2 requesting this modification, but they do not oppose it.

3 The requested reply time is shorter than the fourteen days allowed for motion to
4 dismiss reply briefs under the former schedules, and would not change the Local Rule
5 7(d)(3) noting date of the motions to dismiss. The extension allows Defendants to more
6 fully yet efficiently address the arguments in Plaintiffs' opposition briefs – arguments that
7 will be complex and well-developed because Plaintiffs have had Defendants' motions to
8 dismiss since they were filed in late January – returning fairness and parity to the briefing
9 schedule without significantly delaying the case.

10 **II. BACKGROUND**

11 Plaintiffs filed their original complaint on January 12, 2009, but did not assert
12 claims against the Rating Agencies until their November 23, 2009 Amended Complaint.
13 (Dkt. No. 103). Shortly thereafter, the Court ordered Plaintiffs to file their Amended
14 Consolidated Complaint by December 31, 2009. (Dkt. No. 118). The Court also set a
15 briefing schedule for motions to dismiss acknowledging that additional time was necessary
16 to sufficiently brief the complex legal issues raised by the complaint. That briefing
17 schedule required Defendants to move to dismiss within 30 days of the filing of the Second
18 Amended Consolidated Complaint (by January 29), gave Plaintiffs' four weeks to file their
19 opposition (by February 26), and gave Defendants two more weeks to file their reply (by
20 March 12).

21 The Court subsequently ordered this action consolidated with the related case of
22 *Doral Bank Puerto Rico, et al., v. Washington Mutual Asset Acceptance Corp.*, Case No.
23 09-1557MJP. (Dkt. No. 54). The Court instructed Plaintiffs to file an amended
24 consolidated complaint, rendering moot the pending motions to dismiss and to amend. *Id.*
25 The Court ordered Defendants to file their motions to dismiss within 30 days of the new
26

1 consolidated complaint and to note that motion for consideration under the timeline set
2 forth in Local Rule 7(d)(3).

3 Plaintiffs filed their Second Amended Consolidated Complaint on April 1, 2010.
4 Therefore, Defendants' motions to dismiss are due on May 3.¹ Pursuant to Local Rule
5 7(d)(3), those motions would be noted for four Fridays later on May 28, with Plaintiffs'
6 opposition briefs due on May 24 and Defendants' reply briefs due May 28.

7 **III. ARGUMENT**

8 Defendants ask the Court to allow them six additional days (for a total of ten days)
9 to submit their motion to dismiss reply briefs, without changing the noting date set by the
10 Court. Plaintiffs received Defendants' original motions to dismiss in late January, giving
11 them nearly four months to research and draft their oppositions by the time their briefs will
12 come due. In contrast, Defendants will have only four days to address those opposition
13 arguments under the current schedule – arguments that are likely to be complex, lengthy,
14 and varied, and involve new legal arguments as result of newly added or amended claims.

15 The Court should allow Defendants ten days to draft and file their reply brief,
16 instead of the four days currently allowed under Local Rule 7(d)(3), to ensure that
17 Defendants receive a full and fair opportunity to develop and present their reply arguments
18 in an effective and concise manner. That short extension will preserve the current motions
19 to dismiss noting date, and therefore not result in any delay of the case. It also preserves
20 Plaintiffs' time to submit their opposition briefs. Defendants bear any burden of the
21 proposed schedule by agreeing to file their motions to dismiss early. The short requested
22 extension is particularly appropriate in the case of the Rating Agencies because they only
23 just entered this matter at the end of last year and have actively sought dismissal of claims
24 against them since that time.

25
26 ¹ May 1 falls on a Saturday, making Defendants' motions to dismiss due on the next court day, May 3.

Therefore, Defendants propose the following briefing schedule, which has been agreed to by Plaintiffs:

April 27, 2010	Defendants file their motion to dismiss
May 18, 2010	Plaintiffs file their opposition
May 28, 2010	Defendants file their reply

A motion to dismiss filed on May 3 would ordinarily be noted for May 28 under the “four Fridays” timeline in Local Rule 7(d)(3). Defendants calculated the proposed schedule using that “four Fridays” May 28 noting date, with earlier agreed filing dates to preserve the briefing time ordinarily given to all parties under Local Rule 7(d)(3).

IV. CONCLUSION

For the foregoing reasons, the Court should enter a briefing schedule stating that, if Defendants file their motions to dismiss by April 27, Plaintiffs’ oppositions shall be due May 18 and Defendants’ reply briefs shall be due May 28.

DATED this 2nd day of April, 2010.

RIDDELL WILLIAMS P.S.

By /s/ Paul J. Kundtz

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1 **CERTIFICATE OF SERVICE**

2 Melodi Downs, declares as follows:

3 I am over 18 years of age and a citizen of the United States. I am
4 employed as an executive assistant by the law firm of Riddell Williams P.S.
5 On the date noted below, I electronically filed the foregoing Defendants' Joint
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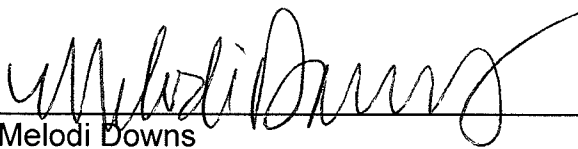
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2 I declare under penalty of perjury under the laws of the United States that
3 the foregoing is true and correct.

4 DATED this 2nd day of April, 2010.

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